

DONNA LUTZ and MARTY LUTZ : CIVIL ACTION  
:  
v. :  
:  
GARDEN SPOT MOTEL : NO. 97-6456

In this action, Donna and Marty Lutz sue the Garden Spot Motel (the Garden Spot) pro se for injuries Mrs. Lutz sustained on October 22, 1995 while on the Motel's premises, and for Mr. Lutz's loss of his wife's services during her period of injury. In their original Complaint, the Lutzes alleged that they are domiciliaries of New York and that the Garden Spot is a motel engaged in business in Pennsylvania. They also demanded \$550,000.00 in damages as a consequence of the injury. However, upon the Garden Spot's first Motion to Strike, the Lutzes failed to respond, and the Court struck their Complaint in an Order dated June 23, 1997.

The Lutzes then refiled their Complaint on October 17, 1997. For a second time, the Garden Spot filed a Motion to Strike the Plaintiffs' Complaint. This time, however, the Lutzes filed a response, styled as an "Affirmation in Opposition," which is in fact a motion for leave to file an amended complaint, with the Amended Verified Complaint appended thereto.

## **II. DISCUSSION**

Federal Rule of Civil Procedure 15(a) provides that leave to amend a pleading "shall be freely granted where justice so requires." Fed. R. Civ. P. 15(a); Hewlett-Packard Co. v. Arch Assoc. Corp., 172 F.R.D. 151, 152 (E.D.Pa. 1997). Generally, leave should be granted unless prejudice to the opposing party, undue delay, bad faith, failure to cure deficiencies previously known, or dilatory motive counsel against permitting the amendment. See Lorenz v. CSX Corp., 1 F.3d 1406, 1413 (3d Cir. 1993) (quoting Foman v. Davis, 371 U.S. 227, 230 (1962)). The Third Circuit has read the Foman case to mean that "prejudice to the non-moving party is the touchstone for denial of an amendment." Id. at 1414.

In the present case, the Lutzes are pro se, and unfamiliar with the Federal Rules of Civil Procedure. Permitting them to file an amended complaint at this stage would not work any cognizable prejudice upon the Garden Spot. Therefore, the Court accepts the Lutzes' Amended Verified Complaint pursuant to its authority under Rule 15(a). Having done so, the Court denies the defendant's Motion to Strike.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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	:	
v.	:	
	:	
GARDEN SPOT MOTEL	:	NO. 97-6456

O R D E R

AND NOW this 2nd of February, 1998, upon consideration of Defendant Garden Spot Motel's Motion to Strike Plaintiffs' Complaint and the Opposition of Plaintiffs Donna Lutz and Marty Lutz, IT IS HEREBY ORDERED that:

- (1) the Plaintiffs' Motion for Leave to Amend their Complaint is GRANTED; and
- (2) the Defendant's Motion to Strike is DENIED.

BY THE COURT:

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HERBERT J. HUTTON, J.